

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed August 4, 2009 and Advisory Action mailed September 11, 2009. At the time of the Final Office Action, Claims 10, 12-17 and 19-23 were pending in this Application. Claims 10, 12-17 and 19-23 were rejected. Claims 10 and 12 have been amended. Claims 25 and 26 have been added. Claims 1-9, 11, 18 and 24 were previously cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 14-17 and 20-23 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. As correctly analyzed by the Examiner and, Claims 14-16 and 20-22 each included an obvious typo as they included the same action on different alternatives. The Examiner did correctly interpret the intended meaning of these claims. Applicants amended Claims 14-16 and 20-22 to correct these obvious typos. The Examiner did enter these amendments according to the Advisory Action dated September 11, 2009.

Rejections under 35 U.S.C. § 102

Claims 10, 12-17 and 19-23 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,345,916 issued to Amann et al. ("*Amann*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the cited art as

anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

According to the Advisory Action dated September 1, 2009, the Examiner stated that *Amann* allegedly reads on the previously presented claims because *Amann* discloses the use of a gradient, for example in col. 5, lines 25-35. Applicant respectfully disagrees.

Amann states:

At point 89 on the cam, for example, fuel spill is initiated for pulse wave termination and shaping the pulse wave at the end of injection. This shaping is determined by the rate for termination which can be either sharp or gradual on a gradient therebetween depending on the engine operating conditions, the position of the cam and the variable rate pumping ramp of the cam selected for fuel injection.

(*Amann*, col. 5, lines 25-35) Applicant however claimed the step of calculating a gradient. *Amann* neither discloses nor mentions that a gradient is calculated let alone that anything is done with such a gradient. Rather *Amann* merely discloses that the shaping of the pulse wave at the end of injection depends on the rate of termination. The termination can be abrupt or gradual. *Amann* neither discloses that any type of measurement takes place to actually calculate the gradient. To further prosecution, Applicant amended the independent claims to include that for determining the gradient at least two actual fuel pressure values or fuel rate values are used. Furthermore, Applicant cancelled the alternative method from claim 10 and drafted a new independent claim according to paragraph [0028] of the specification. Thus, no new matter has been added.

Therefore, the independent claims are not anticipated by *Amann*. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §102 or §103(a), if necessary, and do not concede that the Examiner's proposed rejections or combinations are proper.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants submit a Request for Continued Examination. The Commissioner is authorized to charge the fee of \$810.00 required to Deposit Account 50-4871 of King & Spalding LLP in order to effectuate this filing.

Applicants believe there are no other fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512-457-2000.

Respectfully submitted,
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Date: November 2, 2009

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